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6 **UNITED STATES BANKRUPTCY COURT**
 7 **DISTRICT OF NEVADA**

8 In re:

9 USA COMMERCIAL MORTGAGE COMPANY,

10 Debtor

11 Case No. BK-S-06-10725-LBR
 12 Chapter 11

13 **USACM LIQUIDATING TRUST'S SECOND**
 14 **OMNIBUS OBJECTION TO ALLOWANCE**
 15 **OF PROOFS OF CLAIM BASED IN PART**
 16 **UPON INVESTMENT IN THE FREEWAY 101**
 17 **LOAN, EXCEPT FOR AMOUNTS**
 18 **DESIGNATED AS "UNREMITTED**
 19 **PRINCIPAL"; WITH CERTIFICATE OF**
 20 **SERVICE**

21 Hearing Date: August 30, 2011
 22 Hearing Time: 10:30 a.m.
 23 Estimated time for hearing: 10 minutes

24 The USACM Liquidating Trust (the "USACM Trust") objects to the allowance of
 25 claims based in part upon an investment in the Freeway 101 Loan. The borrower repaid
 26 the Freeway 101 Loan, but USACM diverted the principal away from the Direct Lenders.
 Diverted principal claims for the Freeway 101 Loan were scheduled by Mesirow Financial
 Interim Management, LLC ("Mesirow"). Some of the direct lenders who were given
 scheduled claims also filed proofs of claim. In some instances, the proof of claim amounts
 are well in excess of the scheduled claim amounts. Accordingly, the USACM Trust
 moves to allow the proofs of claim listed in **Exhibit A** to the extent those claims are
 consistent with the scheduled unremitted principal claims related to the Freeway 101 Loan

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1 and disallow any amount in excess of the scheduled unremitted principal claims. This
2 objection is supported by the Supporting Declaration of Ted Burr ("Burr Decl.").
3

MEMORANDUM

I. JURISDICTION

5 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
6 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
7 proceeding under 28 U.S.C. § 157(b)(2)(B). The statutory predicates for the relief
8 requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.
9

II. BACKGROUND

10 1. On April 13, 2006 ("Petition Date"), USA Commercial Mortgage Company
11 ("USACM"), filed a voluntary petition for relief under chapter 11 of the Bankruptcy Case.
12 Debtor continued to operate its business as debtor-in-possession pursuant to sections
13 1107(a) and 1108 of the Bankruptcy Code. Debtor's Post-petition management was under
14 the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
15 ("Mesirow"), who served as the Chief Restructuring Officer. Burr. Decl. ¶ 7.
16

17 2. USACM was a Nevada corporation that, prior to the Petition Date, was in
18 the business of underwriting, originating, brokering, funding and servicing commercial
19 loans, primarily secured by real estate, both on behalf of its investors to purchase
20 fractional interest in loans that USACM originated and then serviced. These investors are
21 referred to as "Direct Lenders" in USACM's bankruptcy case and in this Objection.
22 Burr. Decl. ¶ 8.
23

24 3. On January 8, 2007, the Court entered its Order Confirming the "Debtors'
25 Third Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
26 2376]. Under the Plan, the USACM Trust is the successor to USACM with respect to
standing to seek allowance and disallowance of Claims. The USACM Trust exists as of

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1 the Effective Date of the Plan, March 12, 2007. Geoffrey L. Berman is the Trustee. Burr.
 2 Decl. ¶ 9.

3 4. A “USA Capital Loan Summary as of February 28, 2007” prepared by
 4 Mesirow indicates that the Freeway 101 Loan was repaid. (**Exhibit B**, attached.) Burr.
 5 Decl. ¶ 10.

6 5. There is \$3,750,000 in unremitted principal associated with the Freeway 101
 7 Loan. Scheduled claims for the unremitted principal associated with the Freeway 101
 8 Loan were deemed allowed unless the Trust could match the scheduled claim up to a proof
 9 of claim, in which case the proof of claim was deemed allowed. Burr. Decl. ¶ 11.

10 6. Attached as **Exhibit A** is a list of the Freeway 101 Claims by claimant,
 11 claim number total, claim amount, unremitted principal amount and amount of the claim
 12 subject to objection by the USACM Trust. Burr. Decl. ¶ 12.

13 **III. APPLICABLE AUTHORITY**

14 Under the Bankruptcy Code, any claim for which a proof of claim has been filed
 15 will be allowed unless a party in interest objects. If a party in interest objects to the proof
 16 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
 17 shall allow the Claim except to the extent that the Claim is “unenforceable against the
 18 debtor . . . under any . . . applicable law for a reason other than because such claim is
 19 contingent or unmatured.” 11 U.S.C. § 502(b). The USACM Trust is entitled to object to
 20 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the Court’s
 21 orders.

22 **IV. OBJECTIONS TO ALLOWANCE OF CLAIMS**

23 The USACM Trust moves to allow the proofs of claim listed in **Exhibit A** to the
 24 extent those claims are consistent with the scheduled unremitted principal claims related to
 25 the Freeway 101 Loan and disallow any amount in excess of the scheduled unremitted
 26

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principal claim amount. This objection will not affect the proof of claim to the extent it is based upon an investment in a different loan.

The USACM Trust reserves the right to modify, supplement and/or amend this objection as it pertains to any Claim or claimant herein. The USACM Trust requests any further relief considered to be appropriate by the Court.

Dated: July 29, 2011.

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Copy of the foregoing and pertinent portions of exhibits mailed by first Class postage prepaid U.S. Mail on July 29, 2011 to all parties listed on Exhibit A attached.

/s/ Renee Creswell
Lewis and Roca LLP